

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10869 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVINDRA R. KHANNA

Versus

DEPUTY COLLECTOR

Appearance:

MR RR MARSHALL for Petitioner

No one appears on behalf of the respondent despite service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/01/99

ORAL JUDGEMENT

In this matter, Rule was issued on 15th October 1993 by the Division Bench. Mr.Marshall, learned Counsel for the petitioner has submitted that through this Special Civil Application, the notice Annexure.A dated 23rd December 1992 has been challenged. He has also submitted that number of identical petitions were filed in this matter and in some of the matters, when the

matters came up before the Court, the following questions were framed for the consideration of the Larger Bench:

- (1) Whether the Registering Officer under Section 32A(1) or the Collector under Section 32A(4) can exercise the respective powers beyond the period of two years even on facts justifying the delay?
- (2) Whether Rule 3(2) and Rule 4(2) of the amended Rules are mandatory in nature and non-compliance vitiates the entire proceedings under Section 32A?
- (3) Whether the limitation of six years provided under Section 31A(4) of the Bombay Stamps (Gujarat Amendment) Act, 1994 will have effect on the limitation with respect to cases in which notices have been issued or action has been taken prior to the date of the amendment?

The reference was answered by the Bench of five Judges in the following terms:

"Question No.1:

First part of Question No.1 is replied in the affirmative, namely, the Registering Officer under sub-section (1) of Section 32A can exercise powers beyond two years on facts justifying delay.

We express no opinion on the second part of Question No.1, namely, whether the Collector can suo motu exercise power under sub-section (4) of Sec.32A beyond two years (or six years).

Question No.2:

Rule 3(2) is directory and non-compliance thereof will not vitiate the proceedings.

Rule 4(2) insofar as it requires giving reasonable opportunity of hearing before deciding the question of payment of proper Stamp duty on an instrument is mandatory and non-compliance thereof will proceed afresh in accordance with law to decide and answer the reference made to him.

Question No.3:

We express no opinion whether sub-section (4) of Section 32A as amended by the Bombay Stamp (Gujarat Amendment) Act, 1994 has retrospective operation.

We also express no opinion whether the said provision is substantive in nature or merely procedural. No such question arises in present case."

This reference was answered in Special Civil Applications Nos.5253/93, 11488/93, 12926/93, 14248/93, 3113/94, 4639/94 and 6820/94, on 5th November 1996. Thereafter, large number of identical petitions were decided on 7th February 1997 and again on 20th February 1997, i.e. Special Civil Applications Nos.12101/93 and others as also Special Civil Application No.400/92 and others, respectively. All the Special Civil Applications were disposed of and the Rule was discharged. The learned Counsel for the petitioner submits that this Special Civil Application may also be disposed of accordingly.

2. In the decision dated 20th February 1997 by which the Special Civil Application No.400/92 along with large number of other petitions were decided, the whole group of Special Civil Applications were disposed of in the following terms:

"3. Broadly, there are two sets of cases:-

(A) In some cases, the notice issued by the authorities under the Stamps Act has been challenged without filing the reply before the said authority. In such cases, it will be open for the petitioners to file a reply before such authority within a period of eight weeks from today. If such a reply is submitted within a period of eight weeks, the competent authority shall not raise any objection about the delay.

By way of interim relief, the recovery shall not be given effect to till the matter is finally decided in accordance with the law.

(B) In the second set of cases, the challenge

is to order under 32-A of the Bombay Stamps Act, 1958. In such cases, the petitioners may avail the remedy available under the Act within a period of eight weeks from today. It will be open for the petitioners to raise all the contentions available, which shall be decided by the authority in accordance with the law. If the remedy is availed within a period of eight weeks, the authority shall not raise any objection with respect to delay. There shall be stay on recovery under impugned order till the question with respect to the hardships under proviso to Section 32(1) is decided."

3. In view of the aforesaid, this Special Civil Application is also disposed of accordingly in the same terms. Rule is hereby discharged. Cost easy. The Registry is directed to include the copy of the orders dated 20th February 1997 in this file also.

sreeram.